**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT :**

**THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR**
**&**
**THE HONOURABLE MR. JUSTICE K.M.JOSEPH**

**THURSDAY, THE 3RD AUGUST 2006 / 12TH SRAVANA 1928**

**ST.Rev..No. 306 of 2003**
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**(T.A.NO.321/00 OF KERALA STAT, ADDL. BENCH, KOZHIKODE)**

**REVISION PETITIONER/APPELLANT:**
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**RAJAGIRI JEWELERS,**
**MANANTHAVADY.**

**BY ADV. SRI.ABRAHAM MATHEW (VETTOOR)**
**SMT.MERLIN MATHEW**

**RESPONDENT/RESPONDENT:**
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**STATE OF KERALA, REPRESENTED BY**
**THE SALES TAX OFFICER.**

**BY GOVERNMENT PLEADER (SHRI GEORGEKUTTY MATHEW)**

**THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD ON 03/08/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

**C. N. RAMACHANDRAN NAIR &**
**K. M. JOSEPH, JJ.**

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**ST. REV. NO. 306 OF 2003**

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**Dated this the 3rd day of August, 2006**

**JUDGMENT**

**C. N. Ramachandran Nair, J.**

The only issue raised is whether the tribunal is right in confirming the levy of tax on purchase turnover of primary gold and old gold ornaments by petitioner, which is a jewellery in gold ornaments. Counsel for petitioner contended that the petitioner purchased the old gold and primary gold during the year and gave it to gold smiths for ornament making. Learned counsel for petitioner relied on the decision of the Supreme Court in Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam v. Mohan Jewellery ((1988) 71 STC 256) and contended that there cannot be levy of purchase tax. But, the said decision will not be applicable here because petitioner admittedly got gold jewellery manufactured out of the

old gold and primary gold purchased and has not retained gold in melted form of metal as such.

2. Learned Government Pleader relying on the decision of this Court in State of Kerala v. Cochin Shipyard Ltd. (2006 (3) KLT 380), submitted that the item purchased attracts tax as the same is consumed in manufacture of gold ornaments. Liability under Section 5A is attracted when the item purchased, in circumstances in which no tax is payable by the seller and which is otherwise taxable, is consumed in manufacture of other goods for sale or otherwise. Obviously, the items purchased are consumed in manufacture of gold ornaments. Therefore, liability is attracted under Section 5A and we find no ground to interfere with the tribunal's order. So far as petitioner's contention that part of the old gold is not utilised in manufacture, we do not find in records any closing stock of old gold or primary gold held by petitioner. Of course, if there is a closing stock of old gold

ornaments from out of purchases fully taxed in this year under Section 5A, then there cannot be Section 5A assessment again on the very same commodity, if any portion of which is held as closing stock.

The ST. Rev. is dismissed with the above observation.

**C. N. RAMACHANDRAN NAIR, JUDGE**

**K. M. JOSEPH, JUDGE**

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